

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>ALCHEMIST USA, LLC</b>  <b>UST No. 198601149</b> <b>13780 North Avenue, Bouton, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>2011-UT-01</b>
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**TO:** Alchemist USA, LLC  
ATTN: Kusum Lata  
P.O. Box 8373  
Gurnee, IL 60031

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Alchemist USA, LLC (Alchemist) hereby agree to the following Administrative Consent Order (Order). Alchemist agrees to complete all regulatory compliance activities as described in Section IV, and pay an administrative penalty of \$3,000; with stipulated penalties of \$7,000. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Technical requirements:**

Bill Gibbons, Field Office 5  
Iowa Department of Natural Resources  
401 SW 7th, Suite I  
Des Moines, Iowa 50309  
Ph: 515/725-0268

**Legal requirements:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
502 E 9th Street  
Des Moines, IA 50319  
Ph: 515/281-8934

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and section 455B.476, which authorize the Director to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8, and Department rules contained in 567 Iowa Administrative Code (I.A.C.) chapter 135. Additionally, Iowa

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Code sections 455B.109 and 455B.476 and Department rules in 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

**III. STATEMENT OF FACTS**

The Department and Alchemist hereby agree to the following statement of facts:

1. Alchemist is an Illinois-registered limited liability company with its principle place of business in Gurnee, Illinois. Alchemist is registered with the Iowa Secretary of State as a foreign company doing business in Iowa. Ravinder Singh is president and a principal member of Alchemist.
2. Alchemist is registered with the Department as the owner and operator of the following petroleum underground storage tanks (USTs): a 12,000 gallon tank, 8,000-gallon tank, and a 6,000-gallon tank. The USTs were installed in 1972. Additionally, a 15,000 gallon double-walled UST was installed in 1990. The USTs are all located at 1374 North Avenue, Bouton, Iowa. Alchemist acquired ownership of the USTs and the property by deed recorded November 29, 2005.
3. Alchemist failed to conduct a third party compliance inspection as required by Department rules by December 31, 2007. The Department entered into a Consent Order No. 2009-UT-02 that required Alchemist to complete the delinquent 2007 compliance inspection no later than February 29, 2009 and to pay a \$1,500 administrative penalty. Alchemist retained a certified inspector, and a company named Tanknology Inc. (Tanknology) conducted an initial compliance inspection on February 17, 2009. The inspection noted violations for: (1) failure to conduct annual line tightness tests since the last test was conducted more than a year ago, on January 9, 2008; (2) failure to conduct annual line leak detector tests since the last test was conducted more than a year ago, on January 8, 2008; (3) failure to conduct a five-year internal inspection of the lined USTs, and (4) failure to maintain records. The Tanknology inspector also noted that the dispenser containment sumps had collapsed. Finally, Tanknology reported to the Department that Alchemist failed to provide documentation to the inspector that these violations had been corrected within the 60 day due date.
4. The Department sent a notice to Alchemist reminding it that the February 2009 compliance inspection applied to the inspection required to be completed prior to December 31, 2007, and that the Department rules required a second compliance inspection be completed to cover the period of January 1, 2008 through December 31, 2009. To date, Alchemist has not completed a third-party compliance inspection for this second period of time.
5. The Department conducted a follow-up inspection of the facility on March 5, 2009. The inspector noted the facility still had not produced line tightness tests or line leak

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detector tests records, and the 5-year internal inspection of the lined USTs had still not been completed. The inspector also found that the dispenser containment sumps had collapsed and needed replacement and noted some less important equipment deficiencies. The Department issued an inspection report and notice of violation (NOV) dated March 16, 2009 requiring Alchemist to complete the line and leak detector tests, submit documentation by March 31, 2009, and complete an internal inspection and equipment repairs and upgrades by April 30, 2009.

6. A representative of Alchemist contacted the Department inspector on March 27, 2009. The inspector confirmed receipt of a certification of insurance. The inspector stated that line and leak detector tests must be completed by March 31, 2009 and the Alchemist representative stated she would contact Tanknology and get back to the Department with dates for the tests to be conducted. The Alchemist representative called the Department inspector on April 16, 2010. It was determined the line and leak detector tests had not been scheduled or completed. The representative requested more time and the inspector said he could work with Alchemist to establish a reasonable schedule if all tasks were completed within 90 days.
7. On April 24, 2009, a representative of Acterra Group contacted the Department inspector to inquire as to what needed to be done at the facility. The contractor stated that they were working on doing a number of repairs and upgrades, but the inspector directed that the line and leak detector tests had to be completed first. Acterra Group stated they would schedule those tests within 2 weeks. The Department received no further updates or progress reports from Alchemist.
8. On December 1, 2009 the Department's Field Office (FO) 5 did a follow-up site visit. The conditions at the site were the same and there were no records of leak detection or documentation of line tests. The inspector instructed the store manager to contact the owner to obtain records and she responded that she did not have contact information for the owner.
9. On December 3, 2009, the Department inspector contacted Acterra Group. The representative confirmed that they had conducted line tests and all 4 lines and line leak detectors had passed. He agreed to scan and send the documentation to the Department. The Acterra Group line tests were conducted on June 7, 2009. The Department received a call back from an Alchemist representative who stated that they knew line tests had been done but did not have any records. The inspector asked the representative to report on the status of repairs and upgrades.
10. The Department issued a second NOV to Alchemist dated December 15, 2009 for failure to submit records and failure to complete the tasks as directed in the prior NOV dated March 16, 2009. This second NOV required Alchemist to submit a written response with a plan for bringing the site into compliance by December 30, 2009. Alchemist failed to respond.

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11. On February 10, 2010, FO 5 received a call from the manager of the facility. The manager reported that Tanknology had done a line tightness test and found a leak beneath dispensers No. 1 and 2. They had shut down the dispensers and called in someone to repair the line leak. That same day Tanknology contacted the Department to report the line tightness test failure and stated that "the line was blown out under dispensers 1 and 2."
12. On February 11, 2010, the Department field inspector visited the facility to investigate the line leak. A field technician with Acterra Group was on site. The inspector observed sludge under dispensers 1 and 2 and a strong gasoline odor under dispensers 3 and 4 with an accumulation of ice and gasoline in the containment sump. There was an accumulation of ice but no gasoline odor under dispensers 5 and 6. The Acterra Group technician stated he would have to remove the dispensers from the islands and push out the sides of the containment sumps to make repairs and replace the sumps.
13. On February 12, 2010, the Department field inspector reported his observations to a representative of Alchemist and pointed out the fact that Alchemist had failed to replace the dispensers' sumps. The Department issued a third NOV dated February 16, 2010 to Alchemist summarizing the earlier compliance inspections, identifying the two prior NOVs, and highlighting Alchemist's failure to timely respond to violations. The NOV stated the matter would be referred to the Department's Legal Services Bureau for enforcement.
14. The Department conducted a site inspection April 5, 2010. The inspector found that the under-dispenser containment sumps had not been replaced and Alchemist had not made repairs to the leaking premium line at dispensers 1 and 2. The submersible turbine pumps for this premium line and the dispensers delivering fuel for the premium grade and premium E-10 blended gasoline were bagged and not operational. They were only pumping E-10 gasohol. The inspector noted the presence of gasoline in the containment sump under dispensers 1 and 2, and observed a strong gasoline odor under dispensers 3, 4, 5, and 6.
15. The Department issued Administrative Order 2010-UT-07 on April 14, 2010. Alchemist failed to timely appeal. However, subsequent conversations between Alchemist and FO 5 has resulted in FO 5 being open to an alternative settlement arrangement, whereby Alchemist shall pay a \$3,000 penalty upfront, with the balance subject to completion of all compliance activities.
16. Accordingly, the Department and Alchemist agreed the Department would rescind the 10-UT-07 order and replace it with this Order.
17. Since settlement discussions began, Alchemist has completed an internal tank inspection and line leak test, and made all repairs required from those test results.

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**IV. CONCLUSIONS OF LAW**

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 through 455B.479) establishes the UST program. Iowa Code section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to human health and the environment. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all UST owners and operators. The Commission has adopted such rules in 567 I.A.C. Chapters 135 and 136.
2. Iowa Code section 455B.471(6) defines an "owner" of USTs; Alchemist is an owner as defined because these tanks were in use and dispensing regulated substances after 1985. Therefore, Alchemist is responsible for compliance with the terms of this Order.
3. Iowa Code section 455B.471(5) defines an "operator" of USTs; Alchemist is an operator as defined because it was in control of and had responsibility for the daily operation of the facility. Therefore, Alchemist is responsible for compliance with terms of this Order.
4. Department rule in 567 I.A.C. 135.4(5)"c" requires that all records be maintained at the UST facility and be immediately available for inspection, or be at a readily available alternative site and be submitted upon request for inspection. This rule is derived from the United States Environmental Protection Agency's (EPA) rules adopted at 40 C.F.R. part 180. The preamble to the EPA rule (53 Fed. Reg. 37,140 (Sept. 23, 1988)) indicates that off-site record keeping may be acceptable if the records can be made available in an expeditious manner as determined by the state agency.
5. Department rules in 567 I.A.C. 135.4(5)"b" and 136.20 require USTs owners and operators to fully comply with Department requests for documents and to maintain records at the UST site or at a readily available alternative site; if maintained at an alternative site, owners and operators must be able to produce the records within two business days.
6. Department rules require owners and operators to maintain documentation that all UST systems, including tank and piping leak detection systems, spill and overspill equipment, are installed and maintained in accordance with the manufacturer's standards and the Department's rules. See 567 I.A.C. 135.5.

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7. Automatic line leak detection equipment must be tested annually in accordance with the manufacturer's standards and records must be kept and made available. Pressurized piping must be tightness tested in accordance with 135.5(5)"b" annually.
8. All UST systems, including tanks and piping, must have an approved cathodic protection system. The UST system using cathodic protection must be inspected every three years. Records of the last 2 inspections must be maintained by the owner and operator. See 567 I.A.C. 135.3(2)"b".
9. UST owners and operators are required to retain a Department-certified compliance inspector and conduct a compliance inspection by December 31, 2007, and then every two years thereafter with at least 6 months in between inspections. See 567 I.A.C. 135.20(1).
10. Whenever a certified compliance inspector finds rule violations, the owner and operator must at a minimum complete all corrective action within 60 days of notification from the inspector. Completion of corrective action within 60 days does not relieve the owner and operator of any regulatory requirements requiring action within a shorter time period. See 567 I.A.C. 135.20(3).
11. Alchemist is in violation of the above-cited rules for (1) failure to timely submit line tightness tests and line leak detector tests, (2) failure to complete line tightness tests and line leak detector tests annually, (3) failure to maintain dispenser containment sumps, (4) failure to conduct an internal tank lining inspection within 5 years, and (5) failure to complete the required compliance inspection between January 1, 2008 and December 31, 2009.

**V. ORDER**

THEREFORE, the Department hereby orders and Alchemist agrees to the following:

1. Within 14 days of receipt of this Order, submit a copy of a contract with a Department-certified installer to have all the under-dispenser containment sumps either repaired or replaced in accordance with Department rules in 567 I.A.C. Chapter 135 and referenced industry standards. Submit a report of the upgrade to the Department no later than December 31, 2010.
2. Retain a Department-certified installer/tester to inspect and address all other maintenance issues, including removing the water from the submersible turbine pump containment sumps and other containment sumps, replacing the corroded flex connector, piping, and other corroded components in the sump for the 12,000 gallon no lead plus UST and other corroded components in other containment sumps as necessary; replace or repair all leaking dispenser hoses, repair identified piping leaks under the dispensers, anchor all breakaway valves under the dispensers, and make repairs to wiring, wiring conduit, and electrical junction boxes in the dispensers and at connections to the automatic tank gauge

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probes; and loosen the test boot and pull it away from the opening where the double walled piping enters the submersible turbine pump containment sump for the 8,000 gallon unleaded UST. Submit a report documenting these corrective actions no later than December 31, 2010.

3. Alchemist shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$3,000 via a \$200/month payment plan until paid in full (by April 2012), with the first payment due January 1<sup>st</sup>, 2011. Alchemist shall immediately pay the balance of the \$3,000 in full if any one payment is missed.
4. Additionally, Alchemist agrees to the following stipulated penalties:
  - a. If Alchemist misses the December 31, 2010 deadline for any compliance activity, it shall owe an additional \$2,000, increasing the monthly payments to \$333.33. Alchemist shall immediately owe the balance of the \$5,000 in full if any one payment is missed.
  - b. If Alchemist misses the December 31, 2010 deadline, and does not complete all remaining compliance activities by January 31, 2011, it shall owe another \$5,000 (for a grand total of \$10,000), increasing monthly payments to \$666.66. Alchemist shall immediately owe the balance of the \$10,000 in full if any one payment is missed.
5. This Order supersedes and replaces Administrative Order 2010-UT-07.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code sections 455B.109 and 455B.476 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** The Department has conducted inspections of this facility in the past several months, and therefore the Department is not requiring Alchemist to conduct the delinquent compliance inspection for 2008-2009. Alchemist has therefore *avoided* the costs of completing the third-party compliance inspection, a savings of \$600.

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Additionally, Alchemist has gained other economic benefits because of its *delay* in complying with Department rules. The benefit can be estimated by calculating the interest earned on the cost of compliance over the period of non-compliance. Internal inspections are required to be performed every 5 years after an initial 10-year inspection. The last internal inspection was in 2000. Alchemist acquired the facility in November 2005, and an internal inspection was due by at least January 2006. Therefore, Alchemist has earned the interest on the cost of the internal inspection from that time until September 2010, when Alchemist finally completed the inspection. According to estimates solicited by the Department, the estimated cost of internal inspections on 3 USTs is \$8,400 (\$2,800 per tank). Assuming an average interest rate of 8% per year for the period 2006 to 2010 (based on the interest rate charged by the Iowa Department of Revenue, 701 I.A.C. 10.2) over the period of January 1, 2006 to January 1, 2010, the interest earned would be \$3,360 ( $\$8,400 \times .08 \times 5 = \$3,360$ ). Alchemist finally completed the inspection, as required by a previous order, in September 2010. The interest earned over this additional nine month period is estimated as:  $\$8,400 \times 0.006 \times 9 = \$453.60$ . By conducting the 2005 inspection in 2010, Alchemist will have avoided the cost of completing TWO inspections, one in 2005 and one in 2010. The avoided cost is \$8,400.

Total economic benefit = interest earned over the period of non-compliance =  $\$3,360 + \$453.60 = \$3,813.60$ . Total avoided costs = \$8,400. Total assessment for these issues is \$12,213.60.

Grand total for this factor, therefore is, \$12,813.60 ( $\$12,213.60 + \$600$ ).

**The Department is reserving the right to assess economic benefit for other violations.**

**GRAVITY:** The duty to conduct internal inspections is a major regulatory measure intended to prevent UST releases. These steel USTs were installed in 1972 and upgraded with internal lining in 1990. Thus, the tanks are 38 years old and may be reaching their limits for structural integrity. This makes inspections even more vital. Annual line tightness tests and leak detector tests are a major leak prevention and detection requirement. Alchemist was over 6 months delinquent in conducting the June 2009 tests and over 2 months delinquent in meeting both the third-party compliance inspectors' 60-day corrective action due date, and the Department-inspector's March 31, 2009 due date. Record-keeping is essential to assuring the owner and operator is maintaining a self-directed UST leak prevention and operation and maintenance program. Alchemist failed to respond to records requests for line testing even after completing the tests in June. Maintaining under dispenser containment is essential to preventing line leaks from entering the environment. The combination of these violations justifies an assessment of \$3,000 for this factor.

**CULPABILITY:** Alchemist was issued two prior consent orders for failure to complete the required third-party inspections. Alchemist also owns and operates USTs



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facilities in and out of Iowa. It knew or should have known of these quite basic regulatory requirements, but has demonstrated a repeated pattern of negligence and inadvertence equivalent to gross negligence and reckless disregard for regulatory authority and standards. For this factor \$3,000 is assessed.

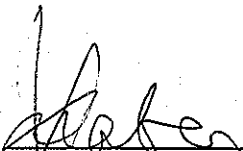
**Since the assessment rational exceeds the statutory \$10,000 limit, the total penalty assessment is \$10,000.**

**VII. WAIVER OF APPEAL RIGHTS**

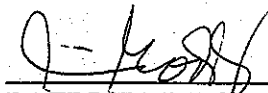
Iowa Code section 455B.476, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Alchemist. By signing this Order all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Compliance with Sections V.1-V.3 of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this Order.

  
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ON BEHALF OF ALCHEMIST USA, LLC

Dated this 1st day of December, 2010

  
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PATRICIA L BODDY, INTERIM DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

PATRICIA L BODDY, INTERIM DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14 day of January, ~~2010~~ 2011

**Alchemist USA, LLC:** Field Office 5; Bill Gibbons; Elaine Douskey; Tamara Mullen; V.B, C, and L

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